

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application
Serial No. 76/596594 for the mark
FRIARS CLUB OF CALIFORNIA

-----X	X	
9900 Santa Monica, Inc.,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91169250
	:	
The Friars National Association, Inc.,	:	
	:	
Applicant.	:	
-----X	X	

**MOTION TO RESUME UNDER 37 C.F.R. § 2.117 and
TO DISMISS OPPOSITION PURSUANT TO 37 C.F.R. § 2.127(e)**

Pursuant to §2.117 and TBMP §510.02(b), Applicant, The Friars National Association, Inc. ("Friars," "Applicant" or "Registrant") by and through its undersigned attorneys, respectfully requests that the instant proceedings be resumed and, pursuant to 37 C.F.R. § 2.127(e), that the Board take appropriate action pursuant to the final determination of a civil action between the parties in the United States District Court for the Central District of California, Civil Action No. 05-04109 (ODW).

BRIEF STATEMENT OF FACTS

Applicant's Mark "Friars Club of California" was published on October 18, 2005. On February 18, 2006, 9900 Santa Monica, Inc. ("Opposer") filed the instant Opposition to prevent Applicant's registration of the Mark. The basis for this Opposition was Opposer's claims that Applicant's Mark "Friars Club of California" for goods in Class 43 and 45 would cause of confusion and dilute Opposer's mark, claiming that it received the mark via an asset purchase

agreement. As well, Opposer alleges that Applicant committed fraud on the United States Patent and Trademark Office. Opposer, on August 15, 2006, submitted its motion to suspend this instant proceeding pursuant to 37 C.F.R. § 2.117 and TBMP Section 510.02(a), pending completion of the Civil Action pending before the Central District of California.

By way of background, on June 7, 2005, Applicant filed a Complaint in the United States District Court for the Central District of California, entitled *Friars National Association, Inc. v. 9900 Santa Monica, Inc. d/b/a The Friars of Beverly Hills and Darren Schaeffer*, alleging that Opposer and its principal Darren Schaeffer infringed upon its common law trademark in "Friars" by operating "The Friars of Beverly Hills," a social club modeled after Applicant's own club. Applicant alleged seven causes of action: (1) trademark infringement of "Friars" under Section 32(1) of the Lanham Act; (2) trademark infringement under Section 43(a) of the Lanham Act; (3) dilution under Section 43(c) of the Lanham Act; (4) dilution under New York General Business Law Section 368-d; (5) dilution under California Business and Professions Code Section 14330; (6) common law unfair competition; and (7) unfair competition under California Business and Professions Code Section 17200.

In a decision dated September 7, 2007, a copy of which is attached hereto as Exhibit A (the "Decision"), the Court dismissed two of Applicant's causes of action, but granted summary judgment on the essential claims in favor of Applicant. Specifically, the Court found that Opposer infringed upon Applicant's trademark of "Friars" and "Friars Club" in violation of Section 43(a) of the Lanham Act, that Opposer diluted Applicant's trademark and that it engaged in unfair competition. Thus, in its Judgment dated September 12, 2007, a copy of which is attached hereto as Exhibit B (the "Judgment"), the Court permanently enjoined Opposer and its principals, directors, officers, agents, servants, employees, and all others in active concert or

participation with them, from using the names "Friars" or "Friars Club," alone or in any combination, for any purpose.

Based upon the Court's decision and order, registrant respectfully asserts that resumption is warranted and appropriate action and judgment be entered in this action.

DISCUSSION

RESUMPTION OF THE INSTANT PROCEEDING IS APPROPRIATE

The Board has the discretion to suspend a proceeding pending the final determination of a civil action. *See* 37 C.F.R. § 2.117. Once the Board has suspended a proceeding "pending the outcome of another proceeding, and that other proceeding has been finally determined, the interested party should notify the Board in writing of the disposition of the other proceeding, and request that further appropriate action be taken in the Board proceeding." TBMP § 510.02(b).

Here, the instant proceeding was suspended pending the outcome and final decision of the District Court. Indeed, in June 2005, Registrant had filed a civil action against Petitioner wherein the central issues involved were exactly the same as the ones at issue in the Opposition. As well, Opposer plainly conceded in its motion to suspend this instant proceeding that the civil action before the Court would impact the hearing in this proceeding. Now that the civil action is complete and all of Applicant's legal and equitable claims have been judicially resolved, it is appropriate for the Board for resume these proceedings with the knowledge and understanding of the Court's reasoning for its decision and judgment granting summary judgment.

DISMISSAL OF OPPOSITION IS WARRANTED PURSUANT TO THE DECISION OF THE DISTRICT COURT

Based upon the decision and order of the District Court, the Board should dismiss this instant proceeding as the Opposer has been permanently enjoined from using the term "Friars" as part of its name, trade name, trademark, or any product, service, and the like.

“Usually, the interested party requests, as a result of the decision in the other proceeding, that judgment be entered in its behalf on one or more issues in the Board proceeding.” TBMP § 510.02(b). That is because a District Court judgment has res judicata and collateral estoppel effects on a pending Opposition. *See* TBMP § 510.02(a), *citing, Goya Foods Inc. v. Tropicana Prods. Inc.*, 846 F.2d 848 (2d Cir. 1988) (“To the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is binding upon the Board, while the decision of the Board is not binding upon the court.”); *see also* 5 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 32:49 at 32-102.1(4th ed. 2004) (“A judgment of a federal court is clearly binding upon the Trademark Board, while an administrative decision of the Trademark Board may have only persuasive value in later court proceedings.”).

Here, the Court granted Applicant’s motion for summary judgment against Opposer, finding that Opposer plainly infringed upon Applicant’s trademark in “Friars” and “Friars Club.” Indeed, the Court found that there Applicant’s trademark was distinctive based upon Opposer’s admissions that “Friars” was viewed as a “luxury brand” and that “everyone knows the Friars in the Country.” *See* Decision at pp. 8-9. Furthermore, the Court found that there was likelihood and actual confusion among consumers, given that members and patrons of Opposer call Opposer’s club “The Friars Club.” *See id.* at p. 10. Moreover, the Court found that Opposer’s use of the name “Friars” diluted Applicant’s trademark, as it was nearly identical to Applicant, that Applicant’s use of “Friars” was famous, and that Opposer was blurring Applicant’s mark as there was an intention to “create an association with Friars National.” *See id.* at pp. 11-17. Finding that Opposer had infringed and diluted Applicant’s mark, the Court entered judgment against Opposer, permanently enjoining Opposer and its principals, directors, officers, agents,

servants, employees, and all others in active concert or participation with them, from using the names "Friars" or "Friars Club," alone or in any combination, for any purpose. *See* Judgment.

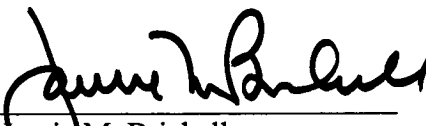
Here, Opposition was based upon the claim that Applicant's Mark "Friars Club of California" would cause confusion and dilute Opposer's alleged marks. However, the Court has decided in Applicant's favor on all issues regarding the trademark "Friars," and has permanently enjoined Opposer from utilizing any name employing Applicant's trademark, including the mark "Friars Club of California." Accordingly, dismissal of the Opposition is clearly appropriate and registration of Applicant's trademark should result. *Goya Foods Inc.*, 846 F.2d 848.

CONCLUSION

Based upon the foregoing, Applicant respectfully requests that the Board grant the instant motion to resume this proceeding and Applicant's motion to dismiss the opposition.

Date: November 8, 2007

Respectfully Submitted,

By: 

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Attorneys for Applicant

CERTIFICATE OF SERVICE

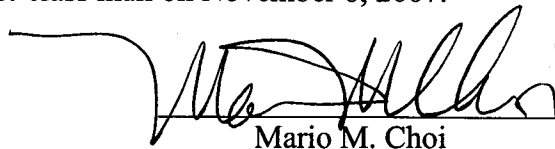
The undersigned hereby certifies that a copy of the foregoing MOTION TO RESUME UNDER 37 C.F.R. § 2.117 and TO DISMISS OPPOSITION PURSUANT TO 37 C.F.R. § 2.127(e) has been served upon Opposer's attorneys,

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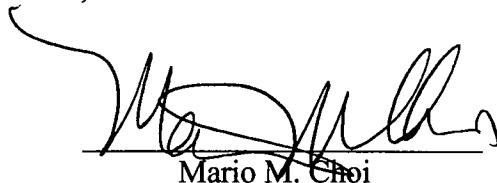
the address designated by said attorney for the purpose of depositing a true copy thereof with the United States Post Service as first-class mail on November 8, 2007.



Mario M. Choi

Certificate of Mailing by First Class Mail

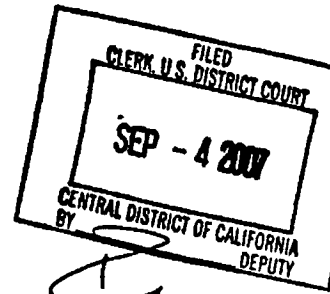
I hereby certify that this MOTION TO RESUME UNDER 37 C.F.R. § 2.117 and TO DISMISS OPPOSITION PURSUANT TO 37 C.F.R. § 2.127(e) is being deposited with the United States Postal Service as "First Class Mail" in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, ATTN: Trademark Trial and Appeal Board on November 8, 2007.



Mario M. Choi



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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRIARS NATIONAL ASSOCIATION,
INC.

Plaintiff,

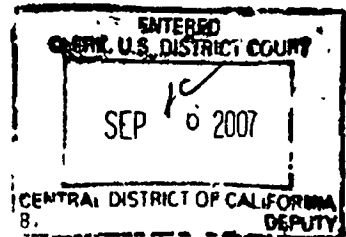
vs.

9900 SANTA MONICA, INC., et al,
Defendants.

Case No. CV 05-4109 ODW (PLAx)

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).



I. INTRODUCTION

On June 7, 2005, Plaintiff Friars National Association, Inc., doing business as "The New York Friars Club" ("Friars National") commenced this action against Defendant 9900 Santa Monica, Inc., doing business as "The Friars of Beverly Hills," and its owner Defendant Darren Schaffer (collectively, "FOBH"). Friars National claims FOBH infringed upon its common law mark "Friars" by operating "The Friars of Beverly Hills," a social club modeled after Plaintiff's own club. The Complaint set forth the following claims: (1) trademark infringement of "Friars" under Section 32(1) of the Lanham Act; (2) trademark infringement under Section 43(a) of the

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1 Lanham Act; (3) dilution under Section 43(c) of the Lanham Act; (4) dilution under
2 New York General Business Law Section 368-d; (5) dilution under California
3 Business and Professions Code Section 14330; (6) common law unfair competition
4 and (7) unfair competition under California Business and Professions Code Section
5 17200.

6 Friars National now moves for summary judgment as to these claims and as to
7 FOBH's fraud counterclaim. FOBH claims Friars National committed fraud when it
8 filed this lawsuit alleging, among other claims, infringement of a registered trademark
9 – a registration that Friars National had expressly abandoned.

10 After considering the arguments and evidence raised in support of and in
11 opposition to the instant motion, as well as the arguments advanced by counsel at the
12 hearing, Friars National's Motion for Summary Judgment is hereby GRANTED in
13 part and DENIED in part.

14 15 **II. FACTS**

16 Except where otherwise indicated, the following facts are undisputed.

17 Friars National is a non-profit organization operated as a social club. (UF, 1.)
18 Since 1904, the organization has had many famous members and has sponsored
19 numerous events for members and their guests, including the Friars "roasts." (UF, 2,
20 4.) The City of New York recognized the organization by naming the block on which
21 it is located "Friars Way" and declaring June 14, 2004 "Friars Club Centennial Day."
22 (UF, 3-4.) The Friars Club has also been the subject of photos, books, articles,
23 movies, and television shows, including a 2004 DVD entitled "A Salute to the Friars
24 Club" and an episode of the television show "Seinfeld." (UF, 8-10.)

25 In 1947, Friars National signed an agreement with Friars Club of California
26 ("FCC") regarding "use of the name 'Friars' in the title of its organization, and the
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1 use of the name 'Friars Club.'" (Opp'n at 2.) Like Friars National in New York, FCC
2 was a non-profit, membership-only club. (UF, 13.) It was formed when members of
3 Friars National in New York decided to go to California to "start an organization for
4 entertainment personalities on the West Coast." (UF, 14.)

5 Among other things, the 1947 agreement required FCC to pay annual dues and
6 included the following provision: "The name of the 'Friars' shall not be used by you
7 in connection with any commercial or business purpose of any kind (including motion
8 pictures, radio, television or any stage show) without the written consent of the Friars
9 National Association, Inc. [] and then only [on] terms to be agreed upon by the New
10 York club." (Decl. of Jamie Brickell, Ex. 19.)¹

11 In 1962, Friars National complained that FCC had failed to pay the agreed
12 upon dues. (UF, 20.) Counsel for FCC responded by letter, making the following
13 acknowledgments: "The New York Friars Club has the exclusive right to the name
14 'Friars Club' and all rights inherent thereto;" and "The California Friars Club derives
15 its right to the use thereof by a license from you (as per agreements and amendments
16 thereto)." (Decl. of Jamie Brickell, Ex. 22.) In 1993, in relation to a disagreement
17 between Friars National and FCC regarding the television broadcast of an event, FCC
18 received an opinion letter from its counsel stating that FCC could not use the name
19 "Friars" or "Friars Club" for commercial or business purposes. (UF, 27.)

20 In 1998, a dispute arose between FCC and Friars National regarding the use of
21 the names "Friars" and "Friars Club." (Opp'n at 2-3.) A lawsuit was filed in the
22 Southern District of New York (*Friars Nat. Assoc., Inc. v. Friars Club of California,*
23 *Inc.*, 99-CV-3615 (JKG)), but was subsequently settled in February 2000. (January
24 23, 2007 Order at 3.) As a result of the settlement, Friars National agreed to

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27 ¹ FOBH's objections to Friars National's evidence are overruled.

1 withdraw three pending federal trademark applications for "Friars Club," "Friars
2 Frolic," and "Friars Club Celebrity Roast." (Id.)

3 In March of 2000, an Express Abandonment of Trademark Application was
4 executed by Plaintiff; however, in September, the United States Patent and Trademark
5 Office ("PTO") registered the marks "Friars Club" and "Friars Frolic." (Id.)
6 Following Friars National's complaint for trademark infringement in this action,
7 FOBH (which was not a party to the 1998 dispute) filed a counterclaim seeking
8 cancellation of the registrations, and moved for summary adjudication of the issue.
9 (Id.) In January 2007, the Court granted FOBH's motion. (Id. at 12.)

10 In 1992, Irwin Schaffer became President of FCC. (UF, 29.) In 2004, FCC
11 sold its assets to Defendant 9900 Santa Monica, Inc., owned by Irwin Schaffer's son,
12 Darren Schaeffer. (UF, 37-38.) The sale agreement purports to transfer to 9900
13 Santa Monica, Inc. "the trade name 'Friars Club of California.'" (UF, 38.)² After the
14 sale, 9900 Santa Monica, Inc. was renamed "The Friars of Beverly Hills" ("FOBH").
15 Darren Schaefer purchased FCC to "save the traditions of the Friars Club" and to
16 "keep the place as status quo as possible." (UF, 44, 45.) Irwin Schaeffer testified that
17 his son "decided he was going to make the Friars Club historical by remodeling it ...
18 and making it look like [what] the New York club should look like." (UF, 46.)

19 ² Friars National argues the asset transfer could not have transferred the right to use the name
20 "Friars" because the Friars National-FCC license was not transferable. (Mot. at 11.) See *Miller v.*
21 *Glenn Miller Productions*, 318 F. Supp. 2d 923, 937-40 (C.D. Cal. 2004) ("[A] trademark licensee
22 [] may not sub-license without express permission from the original licensor."); MCCARTHY ON
23 TRADEMARKS § 18:43 (same). FOBH does not dispute that the license was not transferable;
24 rather, FOBH argues there was no agreement as to the use of the "Friars" name between Friars
25 National and FCC and that "the Friars Club of California had its own rights and gained its own
26 notoriety in California and was not a licensee of the name in California." (Opp'n at 7.) Contrary
27 to FOBH's assertion, however, it is undisputed that FCC derived its right to the name "Friars Club"
28 "by a license from [Friars National] (as per agreements and amendments thereto)." (UF, 21; Brickell
Decl., Exhs. 19-22.) Further, the notoriety gained by FCC stems from Friars National and the history
and traditions associated therewith. Accordingly, and as FOBH does not dispute that the license was
not transferable, FOBH could not have derived the right to use the name "Friars" (in association with
a social club) from FCC.

1 Defendants also admit that they view "Friars" as a "luxury brand," and that they plan
2 to use FOBH and the mark for commercial purposes. (UF, 67, 68.)

3 FOBH has held itself out as the successor to the Friars Club of California and
4 taken steps to retain FCC's members. The press and third parties refer to FOBH as
5 "The Friars Club," as do those who visit FOBH. (UF, 63.) FOBH also refers to itself
6 as "The Friars Club" or "The Friars" and represents itself as such. (UF, 54.)

7 8 **III. DISCUSSION**

9 **A. Legal Standard Governing Summary Judgment**

10 Rule 56(c) requires summary judgment for the moving party when the
11 evidence, viewed in the light most favorable to the nonmoving party, shows that there
12 is no genuine issue as to any material fact, and that the moving party is entitled to
13 judgment as a matter of law. Fed.R.Civ.P. 56(c); *Tarin v. County of Los Angeles*, 123
14 F.3d 1259, 1263 (9th Cir. 1997).

15 The moving party bears the initial burden of establishing the absence of a
16 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).
17 That burden may be met by "'showing' – that is, pointing out to the district court –
18 that there is an absence of evidence to support the nonmoving party's case." *Id.* at
19 325. Once the moving party has met its initial burden, Rule 56(e) requires the
20 nonmoving party to go beyond the pleadings and identify specific facts that show a
21 genuine issue for trial. *Id.* at 323-24; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
22 248 (1968). "A scintilla of evidence or evidence that is merely colorable or not
23 significantly probative does not present a genuine issue of material fact." *Addisu v.*
24 *Fred Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000).

25 Only genuine disputes - where the evidence is such that a reasonable jury could
26 return a verdict for the nonmoving party - over facts that might affect the outcome of
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1 the suit under the governing law will properly preclude the entry of summary
2 judgment. *Anderson*, 477 U.S. at 248; *see also Arpin v. Santa Clara Valley Transp.*
3 *Agency*, 261 F.3d 912, 919 (9th Cir. 2001) (the nonmoving party must present
4 specific evidence from which a reasonable jury could return a verdict in its favor).
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6 **B. Plaintiff's Motion for Summary Judgment**

7 Friars National moves for summary judgment as to the following claims: (1)
8 trademark infringement under Section 32(1) of the Lanham Act; (2) trademark
9 infringement under Section 43(a) of the Lanham Act; (3) dilution under Section 43(c)
10 of the Lanham Act; (4) dilution under New York General Business Law Section 368-
11 d; (5) dilution under California Business and Professions Code Section 14330; (6)
12 common law unfair competition; and (7) unfair competition under California
13 Business and Professions Code Section 17200. Friars National also moves for
14 summary judgment as to FOBH's fraud counterclaim.

15 In order to maintain a claim under Section 32(1) of the Lanham Act, however,
16 a plaintiff must have a *registered* mark. 15 U.S.C. § 1114(a). In light of the Court's
17 January 2007 Order, Friars National does not have a registered mark in "Friars" or
18 "Friars Club" and, therefore, Plaintiff's motion under Section 32(1) is DENIED.
19 Further, the Court finds that FOBH, a California corporation with its principal place
20 of business in this state, is not subject to the laws of the State of New York.
21 Accordingly, Plaintiff's motion for summary judgment as to its dilution claim under
22 New York law is also DENIED. Both claims are DISMISSED. The Court now turns
23 to Plaintiff's remaining claims.

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1 1. Infringement under Section 43(a)

2 Plaintiff argues that Defendants' use of the "Friars" name (and its associated
3 goodwill) to operate FOBH violates Section 43(a) of the Lanham Act. Section 43(a)
4 provides:

5 Any person who, on or in connection with any goods or services, or any
6 container for goods, uses in commerce any word, term, name, symbol,
7 false or misleading description of fact, or false or misleading
8 representation of fact, which -- (A) is likely to cause confusion, or to
9 cause mistake, or to deceive as to the affiliation, connection, or
10 association of such person with another person, or as to the origin,
11 sponsorship, or approval of his or her goods, services, or commercial
12 activities by another person ... shall be liable in a civil action by any
13 person who believes that he or she is or is likely to be damaged by such
14 act.

15 15 U.S.C.A. § 1125(a)(1)(A)

16 While the plain language of Section 43(a) does not expressly provide for the
17 protection of unregistered marks, courts have universally read such protection into
18 the statute when a mark is "distinctive." See *Wal-Mart Stores, Inc. v. Samara Bros.,*
19 *Inc.*, 529 U.S. 205, 210 (2000); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763,
20 768 (1992). The Supreme Court has provided the following explanation of the
21 "distinctiveness" test:

22 [C]ourts have held that a mark can be distinctive in one of two ways.
23 First, a mark is inherently distinctive if "[its] intrinsic nature serves to
24 identify a particular source." [citation] In the context of word marks,
25 courts have applied the now-classic test originally formulated by Judge
26 Friendly, in which word marks that are "arbitrary" ("Camel" cigarettes),
27 "fanciful" ("Kodak" film), or "suggestive" ("Tide" laundry detergent)
28 are held to be inherently distinctive. [citation] Second, a mark has
acquired distinctiveness, even if it is not inherently distinctive, if it has
developed secondary meaning, which occurs when, "in the minds of the
public, the primary significance of a [mark] is to identify the source of
the product rather than the product itself."

29 *Wal-Mart Stores, Inc.*, 529 U.S. at 210-11 (citations omitted)

30 Thus, to prevail on its infringement claim, Friars National must show (1) that
31 "Friars" is distinctive and entitled to protection, and (2) "likelihood of confusion."

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1 U.S. at 211. The media also associates FOBH with the Friars Club, and refers to
2 FOBH as "The Friars Club." (UF, 63.)

3 Further, FOBH admits that it views "Friars" as a "luxury *brand*," that
4 "[e]verybody knows the Friars in the Country," and that the Friars name is "a legacy"
5 and "historic." (UF, 68, 47, 48; Darren Schaeffer Depo.) And, Defendant Darren
6 Schaeffer's deposition testimony makes it clear that he intended to capitalize on the
7 "Friars" name by emulating it in every respect. (UF 47-55.) Accordingly, the Court
8 finds that "Friars" is suggestive *and* has developed secondary meaning.

9 b. Likelihood of Confusion

10 Having established distinctiveness, Plaintiff must also show that Defendants'
11 use of the name "The Friars of Beverly Hills" is likely to cause confusion "as to the
12 affiliation, connection, or association" of FOBH with Friars National. 15 U.S.C. §
13 1125(a)(1)(A). Plaintiff's showing implicates the following factors: (1) strength of
14 the mark; (2) proximity or relatedness of the goods; (3) similarity of sight, sound and
15 meaning; (4) evidence of actual confusion; (5) marketing channels; (6) type of goods
16 and purchaser care; (7) intent; and (8) likelihood of expansion. *AMF, Inc. v.*
17 *Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979).

18 The *Sleekcraft* factors relevant in this case are met. First, the "Friars" name is
19 inherently distinctive and well recognized, and although "Friars" is merely
20 suggestive, FOBH's own evidence demonstrates that it has acquired greater
21 distinctiveness among consumers. Second, FOBH uses the word "Friars" in the name
22 of its social club, which provides the same types of amenities and services to its
23 members as Friars National. Third, the marks are similar, the only difference being
24 the geographic designations "New York" and "Beverly Hills." Further, although
25 FOBH dropped "Club" from its name, the Court bears in mind that similarities are
26 weighed more heavily than differences. As the Ninth Circuit observed, FOBH uses

1 "the ['Friars'] mark by incorporating [it] into its own mark as a separate, visually
2 identifiable element, and [] a significant segment of the consuming public would
3 likely [and in fact do] focus on that element as an identifier essentially the same as
4 [Friars National's] mark." *Thane Intern.*, 305 F.3d at 907.

5 Fourth, members/patrons of FOBH admittedly "make an assumption" and call
6 FOBH "The Friars Club." Fifth, as neither side addresses the marketing channels, the
7 Court finds that this factor is impertinent, and does not alone preclude a finding of
8 likelihood of confusion. Sixth, while the services offered by the parties are aimed at
9 the affluent, nothing suggests that the relevant consumers exercise greater care when
10 they transact business. Seventh, Defendants admit that FOBH was created to "save
11 the traditions of the Friars Club" and made to "look like the New York Club should
12 look like." (UF, 44, 46.) For good measure, Defendants also admit that they
13 themselves often refer to FOBH "as 'The Friars Club' or merely 'The Friars.'" (UF,
14 54; Brickell Decl., Exhs. 37-50.)³ Finally, to the extent relevant, "likelihood of
15 expansion" also weighs in favor of Plaintiff, as Friars National may license a new
16 party (after FCC became defunct in 2004) to operate "The Friars Club" in California.

17 In short, Plaintiff has shown – largely through the admissions of Defendants,
18 that FOBH's use of the "Friars" name is likely to (and in fact did) cause confusion
19 among consumers. Accordingly, Plaintiff's motion for summary judgment as to its
20 infringement claim under Section 43(a) of the Lanham Act is GRANTED.

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22 ³ Defendants' argument that Plaintiff cannot show likelihood of confusion without survey evidence
23 is unavailing. See *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 1404 (9th
24 Cir. 1997) ("There are at least three types of proof of likelihood of confusion: (1) survey evidence;
25 (2) evidence of actual confusion; and (3) an argument based on an inference arising from a judicial
26 comparison of the conflicting marks themselves and the context of their use in the marketplace.").
27 Here, Defendants themselves have produced evidence of actual confusion, and a judicial comparison
28 of the conflicting marks and the context of their use in the marketplace raises an inference of
confusion.

1 2. Dilution under Section 43(c) of the Lanham Act

2 Anti-dilution is the most potent form of trademark protection and has the
3 potential of "over-protecting trademarks." *Thane Int'l, Inc.*, 305 F.3d at 908. Aside
4 from establishing the identity or near identity of the marks, a party alleging dilution
5 must prove that (1) its mark is famous; (2) the defendant is making commercial use
6 of the mark in commerce; (3) the defendant's use began after the plaintiff's mark
7 became famous; and (4) the defendant's use presents a likelihood of dilution of the
8 distinctive value of the mark. *Avery Dennison, Corp. v. Sumpton*, 189 F.3d 868, 874
9 (9th Cir. 1999).⁴ As the anti-dilution statute is relatively new, "courts . . . do better
10 to feel their way from case to case . . . rather than ruling in sweeping brush strokes."
11 *Thane Int'l*, 305 F.3d at 905.

12 a. Identity or Near Identity

13 "Friars of Beverly Hills" is not identical to "Friars" (or "The New York Friars
14 Club"), but it is nearly identical. "For marks to be nearly identical to one another,
15 they 'must be similar enough that a significant segment of the target group of
16 customers sees the two marks as essentially the same.'" *Thane Int'l*, 305 F.3d at 906
17 (quoting *Playboy Enterprises, Inc. v. Welles*, 279 F.3d 796, 806 n.41 (9th Cir. 2002));
18 see also *Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Utah Div. of*
19 *Travel Dev.*, 170 F.3d 449, 458 (4th Cir. 1999) (near identity requires "sufficient
20 similarity between the junior and senior marks to evoke an instinctive mental
21 association of the two by a relevant universe of consumers.") (internal quotations
22 omitted). But see *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 469 (7th Cir.

23
24
25
26 ⁴ The second and third factors are satisfied here. FOBH uses the "Friars" mark in commerce and
27 Defendants started using the mark in 2004, well after it became famous (as discussed below).
28

1 2000) (applying the same similarity test for a dilution claim used for a related
2 infringement claim).⁵

3 While not identical, the only difference between "Friars" and "Friars of Beverly
4 Hills" is the geographic designation "of Beverly Hills." But FOBH "may not evade
5 trademark law" by adopting Friars National's name and adding a geographic
6 reference to try and distinguish its name. *Lozano Enters. v. La Opinion Publ. Co.*,
7 1997 U.S. Dist. LEXIS 20372, 8-9 (C.D. Cal. July 30, 1997); see also *Int'l Kennel*
8 *Club, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1088 (7th Cir. 1988) (words "de New
9 York" after words "Lycee Francais" to describe institution "is of little significance.
10 Both would ordinarily be called . . . 'Lycee Francais.'") (quotations and citation
11 omitted); *United States Jaycees v. Philadelphia Jaycees*, 639 F.2d 134, 142 (3d Cir.
12 1981) (trademarked name preceded by geographic designation "Philadelphia").

13 Further, after setting forth the Second Circuit's view that "the similarity
14 requirement may be less stringent in circumstances in which the senior mark is highly
15 distinctive and the junior mark is being used for a closely related product [or
16 service]," the Ninth Circuit noted that its test (as announced in *Playboy Enterprises*)
17 accommodates such an approach. *Thane Int'l*, 305 F.3d at 907 n.7 (Ninth Circuit test
18 "may accommodate circumstances in which the senior mark is so highly distinctive
19 that consumers are likely to view a junior mark that is a bit different as 'essentially
20 the same' as the senior one.").

21 This is one of those circumstances envisioned by the Second Circuit and *Thane*
22 *Int'l*. As discussed above, and demonstrated by the entire record, "Friars" has
23 become highly distinctive. And, the evidence conclusively establishes that consumers
24 and the public at large, including Defendants, are likely to, and in fact do, focus on

25
26 ⁵ As Section 43(c) demands greater similarity than 43(a) in the Ninth Circuit, the Court's discussion
27 here also applies to the infringement claim above.

1 the "Friars" name and view FOBH and Friars Club as "essentially the same." *Id.* at
2 907; *See, e.g.,* (UF, 63; Brickell Decl., Exh. 34, 58-61) (FOBH patrons – the target
3 group of consumers – often refer to FOBH as "The Friars Club." The press and third
4 parties also refer to FOBH as the "Friars Club."). Finally, the junior mark (Friars of
5 Beverly Hills) is being used in the same niche market (and provides the same
6 services) as the senior mark.

7 Accordingly, the Court finds the names nearly identical, and although they may
8 seem a bit different, consumers are likely to (and in fact do) view them as essentially
9 the same.

10 b. Fame

11 To meet the famousness requirement under 43(c) a mark must be "truly
12 prominent and renowned." *Thane Int'l*, 305 F.3d at 907-08. The following factors are
13 relevant to this inquiry: (I) The duration, extent, and geographic reach of advertising
14 and publicity of the mark, whether advertised or publicized by the owner or third
15 parties; (ii) The amount, volume, and geographic extent of sales of goods or services
16 offered under the mark; (iii) The extent of actual recognition of the mark; and (iv)
17 Whether the mark was registered under the Act of March 3, 1881, or the Act of
18 February 20, 1905, or on the principal register. 15 U.S.C.A. § 1125(c)(2)(A)

19 Here, Friars National and third parties (including the media) have widely
20 publicized "Friars" for at least eighty (80) years. (*See* Brickell Decl., Exh. 14)
21 (collection of newspaper articles from throughout the country dating back to 1927).
22 The Friars' publicity has also reached the entire country through television shows,
23 books and movies, and has not been restricted to New York and California, as
24 Defendants argue. Friars National offered various services under the "Friars" mark
25 in New York City and allowed FCC to do the same in California – through a license
26 for use of the "Friars" name. Further, "Friars" (like the Friars Club) is well
27

1 recognized, as demonstrated by Defendants' own admissions. And, while "Friars"
2 was not registered under the aforementioned acts, Friars National has been using
3 "Friars" for over a hundred years. In light of this evidence, and Defendants'
4 acknowledgment thereof, the Court is inclined to find "Friars" famous for purposes
5 of the federal anti-dilution statute.

6 The Court need not go so far as to hold that "Friars" is a "household name,"
7 however, because even if "Friars" has not become "truly prominent and renowned,"
8 it has certainly attained famousness in a niche market. *See Thane Int'l*, 305 F.3d at
9 908 ("[M]arks famous in only a limited geographic area or a specialized market
10 segment can be 'famous' for the purposes of the federal anti-dilution statute."). Niche
11 fame protection is limited, however, protecting a mark "only when [it] is famous
12 within a niche market and the alleged diluter uses the mark within that niche." *Id.*
13 Defendants use the mark "Friars" to run a social club modeled after The Friars Club,
14 diluting the name within that niche. (*See* UF 44, 46) This is a classic case of niche
15 fame (and dilution).

16 While "Friars" may not have attained the famousness of Coca-Cola and
17 Mercedes-Benz, among others, Defendants' own admissions establish that "Friars"
18 is famous within a niche market – social clubs for the famous and affluent. For
19 example, Defendants admit that they view "Friars" as a "luxury brand," (UF 68.), that
20 their customers recognize the "Friars Club," and Darren Schaeffer concedes that "the
21 Friars name is 'a legacy'" in the entertainment industry and "the country." (UF, 48.)
22 Further, Plaintiff's evidence – including books, articles, movies and television shows
23 regarding the history and fame of the Friars (UF, 10-12) – demonstrates that "Friars"
24 has attained sufficient niche fame for purposes of the anti-dilution statute. Thus, as
25 Plaintiff's mark is both distinctive (*See* section III (B)(1)(a)) and famous, the Court
26 turns to dilution or "blurring."

1 c. Likelihood of Dilution

2 i. *The Governing Law*

3 FOBH contends Plaintiff must show actual dilution, relying on *Moseley v. V. KAYNE*
4 *Secret Catalogue*, 537 U.S. 418 (2003) (claim under 15 U.S.C. § 1125(c)(1))
5 “unambiguously requires a showing of actual dilution, rather than a likelihood of
6 dilution.”). However, *Moseley* has been superseded by the Trademark Dilution
7 Revision Act of 2006, which merely requires likelihood of dilution – consistent with
8 the Ninth Circuit’s *Avery Dennison* test. See Pub. L. No. 109-312 § 2(1), 120 Stat.
9 1730.

10 Further, while the Ninth Circuit has not applied the amended statute to cases
11 filed before its effective date,⁶ this Court is compelled to do so here because “[w]hen
12 the intervening statute authorizes or affects the propriety of prospective relief [as it
13 does here], application of the new provision is not retroactive.” *Landgraf v. Usi Film*
14 *Prods.*, 511 U.S. 244, 273-74 (1994) (“‘[R]elief by injunction operates *in futuro*,’ and
15 [] plaintiff had no ‘vested right’ in the decree entered by the trial court.”) (quoting
16 *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184 (1921))
17 (Section 20 of the Clayton Act, enacted while case was pending on appeal, governs
18 propriety of injunctive relief); *Starbucks Corp. v. Wolfe's Borough Coffee, Inc.*, 477
19 F.3d 765, 766 (2d Cir. 2007) (applying the Trademark Dilution Revision Act of 2006
20 to claim filed in 2005). Accordingly, the Court applies 15 U.S.C. § 1125(c) as
21 amended by the Trademark Dilution Revision Act of 2006.⁷

22 ⁶ See *Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1036 (9th Cir. 2007) (“The Supreme Court,
23 in *Moseley*, altered the last element of our *Avery Dennison* test to require a showing of ‘actual
24 dilution.’”). (citation omitted); *Jada Toys, Inc. v. Mattel, Inc.*, -- F.3d --; 2007 WL 2199286; 2007
25 U.S. App. LEXIS 18339 n.2 (9th Cir. August 2, 2007) (noting, without discussion, that the
26 Trademark Dilution Revision Act of 2006 does not apply to case before it but finding that
27 counterclaimant showed actual dilution.).

28 ⁷ To the extent that the Court’s decision is inconsistent with *Jada Toys*, the Court notes that *Jada*
 Toys did not discuss why the revision act of 2006 did not apply to the case before it. Further, *Jada*

1 Friars National is the only entity presently (lawfully) using "Friars" in association
2 with a social club. The only other entity to use the mark in the operation of a social
3 club was FCC, through a strictly enforced license agreement with Friars National.
4 Fourth, "Friars" is widely recognized, as Defendants' (and Plaintiff's) evidence
5 demonstrates. Fifth, FOBH admits that its use of the name "Friars" is intended to
6 create an association with Friars National. (UF, 46, 51.) And, Defendants' evidence
7 also demonstrates that they and their customers actually associate FOBH with the
8 Friars Club. (UF, 63.)

9 In short, Defendants are using a mark (used by Friars National for over a
10 hundred years) to identify a social club that is for all intents and purposes modeled
11 after Plaintiff's historic club. Defendants admit that they have made FOBH "look like
12 the New York club should look like" and have told the public that "the Friars will
13 simply become a more grand version of itself." (UF, 46, 51.) They also admit that
14 consumers associate FOBH with the Friars Club. *See Playboy Enterprises*, 279 F.3d
15 at 809 ("Dilution works its harm not by causing confusion in consumers' minds
16 regarding the source of a good or service, but by creating an association in
17 consumers' minds between a mark and a different good or service.").

18 Clearly, FOBH's use of the "Friars" name is likely to create an association
19 between FOBH and Friars Club – undermining Plaintiff's ability to uniquely identify
20 Friars National, and allowing FOBH to profit on Friars National's investment in
21 "Friars" and the Friars Club. *See Id.* at 805 (anti-dilution statute protects against
22 "appropriation of or free riding on the investment [the trademark holder] has made
23 in its [trademark]."). FOBH's "free riding on the investment" of Friars National must
24 now come to an end.

25 Accordingly, Plaintiff's motion for summary judgment as to its dilution claim
26 under Section 43(c) of the Lanham Act is GRANTED.

1 3. Dilution Under California Business and Professions Code
2 Section 14330

3 The legal framework used to analyze dilution under California Business and
4 Professions Code Section 14330 is "substantially the same as the framework used
5 to evaluate claims under the Lanham Act." *E.E.S. Entm't 2000, Inc. v. Rock Star*
6 *Videos, Inc.*, 444 F.Supp.2d 1012, 1049 (C.D. Cal. 2006); *See also Panavision*
7 *Intern., L.P.*, 141 F.3d at 1324. As the Court has already found dilution under
8 Section 43(c), Plaintiff's motion for summary judgment as to this claim is likewise
9 GRANTED.

10 4. Common Law Unfair Competition and Unfair Competition
11 Under California Business and Professions Code Section
12 17200

13 An unfair competition claim under California Business and Professions
14 Code Section 17200 requires an unlawful, unfair, or fraudulent business act or
15 practice. Cal. Bus. & Prof. Code § 17200. The Court has already found
16 Defendants' use of the "Friars" mark unlawful under Sections 43(a) and 43(c) of
17 the Lanham Act (15 U.S.C. §1125) and under Section 14330 of the California
18 Business and Professions Code. Accordingly, Plaintiff's motion for summary
19 judgment as to its unfair competition claims is GRANTED.

20 C. FOBH's Fraud Counterclaim

21 Friars National also moves for summary judgment as to Defendants' fraud
22 counterclaim. Defendants' fraud claim requires: (1) a misrepresentation by the
23 Plaintiff/Counter-Defendant, (2) knowledge of the falsity of its representation, (3)
24 intent to defraud, (4) justifiable reliance on the misrepresentation by counter-
25 claimant, and (5) resulting damages. *See Lazar v. Superior Court*, 12 Cal. 4th 631,
26 638 (1996). Defendants claim Friars National committed fraud by asserting a
27

1 claim based on “registered” trademarks, which Friars National had expressly
2 abandoned. This counterclaim is hopelessly uncertain, if not frivolous. ✓

3 In their Opposition, Defendants claim Friars National’s misrepresentation is
4 the filing of its first claim in this action, trademark infringement of a registered
5 trademark – a registration that Friars National had expressly abandoned. (Opp’n
6 at 14.) Defendants go on to explain that the alleged intent to defraud “stems from
7 Counter-Defendant attempting to induce Counterclaimant to cease using the name
8 ‘Friars of Beverly Hills.’” (Id.) Defendants then *incongruently* argue that they
9 relied on Friars National’s alleged misrepresentation “when they purchased the
10 assets and goodwill of Friars Club of California, Inc. [believing] that they would
11 be able to proceed without there being a federal trademark registration in place.”
12 (Id.)

13 In essence, FOBH argues that when it acquired FCC’s assets in 2004 it
14 relied on a misrepresentation (the 2005 claim for infringement of a registered
15 trademark) made one year later. The reasonable formulation of FOBH’s claim, as
16 set forth in the countercomplaint, is that it bought FCC’s assets (in 2004) in
17 reliance on Friars National’s representation to FCC (in 2000) that it would
18 abandon the pending registrations. This argument fails, however, not merely
19 because FOBH cannot show intent to defraud, but because Friars National did not
20 misrepresent that it would abandon its trademark applications. Friars National in
21 fact filed a form abandoning its applications, but the PTO registered the marks
22 despite the abandonment. Further, although this Court previously cancelled the
23 registrations, it denied FOBH’s motion for sanctions. (See January 23, 2007
24 Order.) Simply, Friars National did not misrepresent that it would abandon its

1 trademark applications and, though its infringement claim under Section 32(a) was
2 ill advised, it does not constitute fraud.⁸

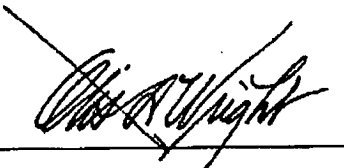
3 Accordingly, Plaintiff's Motion for Summary Judgment as to Defendants'
4 Fraud Counterclaim is GRANTED.

5
6 **IV. CONCLUSION**

7 FOBH has intentionally infringed on the "Friars" name. It has also blurred
8 the name and undermined Friars National's ability to uniquely identify itself and
9 its services. Accordingly, Plaintiff's Motion for Summary Judgment is
10 GRANTED, except as to the claims under Section 32(1) of the Lanham Act and
11 New York General Business Law 368-d, which are DISMISSED. Plaintiff is to
12 prepare and lodge a Proposed Entry of Judgment with the Court within 14 days of
13 the date of this order.

14
15 IT IS SO ORDERED.

16
17 DATED: September 4, 2007

18
19 
20 Otis D. Wright II
United States District Judge

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22
23 ⁸ Even if FOBH were able to establish a fraud claim, it cannot recover damages for "uncertainty
24 regarding use of the name Friars of Beverly Hills." (See Opp'n at 15.) Nor can FOBH recover the
25 costs of this lawsuit on a theory of fraud. (Id.) Among other things, FOBH could not have
26 reasonably relied on the allegedly fraudulent claim, which it knew was based on a trademark
27 registration that had been "EXPRESSLY abandoned." (Id.) (emphasis in original) And, while
28 FOBH had to defend against an unsubstantiated claim, it also had to (unsuccessfully) deal with other
claims, and costs related to the allegedly fraudulent claim would be far too speculative to parse out.



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15 *Attorneys for Plaintiff/Counterdefendant Friars National Association, Inc.*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 **FRIARS NATIONAL ASSOCIATION,**
19 **INC.**

20 Plaintiff,

21 vs.

22 9900 SANTA MONICA, INC. d/b/a
23 THE FRIARS OF BEVERLY HILLS
24 and DARREN SCHAEFFER,

25 Defendants.

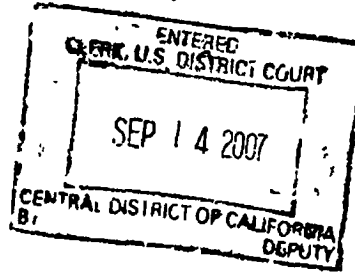
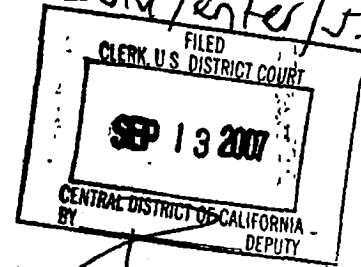
26 9900 SANTA MONICA, INC. d/b/a
27 THE FRIARS OF BEVERLY HILLS
28 and DARREN SCHAEFFER,

Counterclaimants,

vs.

FRIARS NATIONAL ASSOCIATION,
INC.,

Counterdefendant.



THIS CONSTITUTES NOTICE OF ENTRY.
AS REQUIRED BY FRCP, RULE 77(g).

Case No. CV05-4109 ODW (PLAx)

[PROPOSED] JUDGMENT

129

1 On August 22, 2007, this Court heard the Motion of Plaintiff/Counterdefendant
2 Friars National Association, Inc. ("The Friars Club" or "Plaintiff") for Summary
3 Judgment (the "Motion") in this matter. This Court, having considered Plaintiff's
4 Statements of Uncontroverted Facts, the Statement of Genuine Issues submitted by
5 Defendants/Counterclaimants 9900 Santa Monica, Inc. d/b/a Friars of Beverly Hills
6 and Darren Schaeffer (collectively "Defendants"), the Declarations and evidentiary
7 materials and objections submitted on the Motion, the Memoranda of Points and
8 Authorities filed in favor of and opposed to the Motion, and the argument of counsel,
9 and the Court having rendered an Order Granting in Part and Denying in Part
10 Plaintiff's Motion for Summary Judgment dated September 4, 2007, which is made a
11 part hereof, it is hereby:

12 **ORDERED, ADJUDGED AND DECREED**, that The Friars Club's Motion
13 for Summary Judgment is **DENIED** and **DISMISSED** with respect to Plaintiff's first
14 cause of action for trademark infringement of "Friars" under Section 32(1) of the
15 Lanham Act and fourth cause of action for dilution under New York General
16 Business Law Section 367-d; and it is further

17 **ORDERED, ADJUDGED AND DECREED**, that The Friars Club's Motion
18 for Summary Judgment is **GRANTED** with respect to Plaintiff's second cause of
19 action for trademark infringement under Section 43(a) of the Lanham Act, third cause
20 of action for dilution under Section 43(c) of the Lanham Act, fifth cause of action for
21 dilution under California Business and Professions Code Section 14330, sixth cause
22 of action for common law unfair competition and seventh cause of action for unfair
23 competition under California Business and Professions Code Section 17200; and it is
24 further

25 **ORDERED, ADJUDGED AND DECREED**, that the counterclaim of
26 Defendants/counterclaimants 9900 Santa Monica, Inc. d/b/a Friars of Beverly Hills
27 and Darren Schaeffer for fraud is **DISMISSED WITH PREJUDICE**; and it is
28 further

1 **ORDERED, ADJUDGED AND DECREED**, that Defendants, and each of
2 their principals, directors, officers, agents, servants, employees, and all persons in
3 active concert or participation with them (each, an **"Enjoined Party"**), or any of
4 them, directly or indirectly, are hereby **PERMANENTLY ENJOINED**, individually
5 and collectively, from using the names and/or the trademarks "Friars" or "Friars
6 Club", alone or in any combination, for any purpose, including without limitation:

7 (a) in, as, or as part of a corporate name, trade name, trademark, "d/b/a" or
8 any other name;

9 (b) to identify any Enjoined Party, or any employee, product, service or
10 facility of an Enjoined Party, in any manner (including, without limitation, in
11 any media, advertisement, signage, letterhead, stationary package, wrapper,
12 receptacle, advertisement, or promotional material);

13 (c) to represent or suggest in any manner that any Enjoined Party is the
14 source of, is authorized by or is affiliated with Plaintiff The Friars Club or any
15 of its past, present, or future affiliates, parents, subsidiaries or licensees;

16 (d) in any media or whatsoever, including in any advertisement, film,
17 television program, DVD, CD, digital file, Internet website, webpage, space or
18 "blog", or in any other entertainment product in any form whatsoever; and

19 (e) in or in connection with any merchandise, good, or service, including in
20 any promotion, offer for sale, sale, license, advertisement or distribution of any
21 merchandise, good or service; and it is further

22 **ORDERED, ADJUDGED AND DECREED**, that Defendants shall, by
23 October 15, 2007, **DISABLE** their internet web site located at www.thefriarsbh.com
24 and any other websites, webpages, spaces or "blogs" in which any Enjoined Party
25 identifies itself or any other Enjoined Party or Parties as the "Friars" or the "Friars
26 Club" and/or represents or suggests in any manner that any Enjoined Party is the
27 source of, is authorized by, or is affiliated with Plaintiff The Friars Club or any of its
28 past, present, or future affiliates, parents, subsidiaries or licensees; and it is further

1 **ORDERED, ADJUDGED AND DECREED**, that Defendants shall, by
2 October 15, 2007, **REMOVE** and **DESTROY** all signs, labels, prints, packages,
3 wrappers, receptacles, and advertisements or promotional materials in the possession
4 of Defendant bearing the term "Friars" or "Friars Club" alone or in any combination;
5 and it is further

6 **ORDERED, ADJUDGED AND DECREED**, that Defendants shall, by
7 October 15, 2007, **REMOVE** and henceforth **CEASE** to display any and all
8 memorabilia bearing the term "Friars" or "Friars Club" alone or in any combination;
9 and it is further

10 **ORDERED, ADJUDGED AND DECREED**, that Plaintiff, as the prevailing
11 party, shall recover costs in the amount of \$ TBD; and it is further

12 **ORDERED, ADJUDGED AND DECREED**, that this Court shall retain
13 jurisdiction for the purpose of enforcing this Judgment And Order of Permanent
14 Injunction.

15
16 **IT IS SO ADJUDGED.**

17
18 Dated: September 12, 2007

19
20
21 
22 _____
23 OTIS D. WRIGHT, II
24 United States District Judge
25
26
27
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over
4 the age of 18 and not a party to the within action. My business address is 8383,
Wilshire Boulevard, Suite 510, Beverly Hills, California 90211.

5 On September 12, 2007, I served the foregoing document described as
6 [PROPOSED] JUDGMENT on the interested parties in this action

7 ☐ (VIA FAX) I served a copy of said document to the office of by transmitting a
8 copy thereof by fax transmission to the following individual(s). The transmission
9 was reported complete and without error.

10 ☒ (X) by placing ☐ the original ☒ a true copy or copies thereof enclosed in sealed
11 envelopes addressed as follows:

12 **Paul Levine, Esq.**
13 LAW OFFICES OF PAUL H. LEVINE
14 10350 Santa Monica Boulevard, Suite 350
Los Angeles, California 90025

15 **Martin S. Reed, Esq.**
16 ANKER REED HYMES, ET AL
17 1901 Avenue of the Stars, 11th Floor
Los Angeles, California 90067

18 **Frank P. Scibilia, Esq.**
19 PRYOR CASHMAN SHERMAN, ET AL
20 410 Park Avenue, 12th Floor
21 New York, New York 10022

22 ☒ (X) BY MAIL

23 ☒ (X) I deposited such envelope in the mail at Beverly Hills, California. The
24 envelope was mailed with postage thereon fully prepaid.

25 ☐ () BY OVERNIGHT EXPRESS. I deposited such envelope in the Overnite
26 Express drop-off box at Beverly Hills, California.

27 ☐ () BY PERSONAL SERVICE. By causing the document to be personally served
28 and delivered to the addressee listed above.

Executed on September 12, 2007, at Beverly Hills, California.

☒ (X) Federal I declare that I am employed in the office of a member of the bar
of this court at whose direction the service was made.


DEL SEYEDAN